

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In The Matter of the Application of Aquila, )  
Inc. for Approval of its Experimental )  
Regulatory Plan and for a Certificate of )  
Convenience and Necessity Authorizing )  
it to Participate in the Construction, Ownership, )  
Operation, Maintenance, Removal, )  
Replacement, Control and Management of )  
a Steam Electric Generating Station in )  
Platte County, Missouri, or alternatively for an )  
Order specifically confirming that Aquila, Inc. )  
has the requisite authority Under its )  
Existing Certificate(s). )

Case No. EO-2005-0293

**PUBLIC COUNSEL’S RESPONSE TO AQUILA’S STATUS REPORT**

COMES NOW the Office of the Public Counsel and for its Response to Aquila’s suggested hearing schedule states as follows:

1. The parties are continuing discussions with the hope of reaching a unanimous stipulation and agreement. While there is much that the parties agree on, there are still significant issues that have not been resolved. The parties are working to schedule further discussions later this week. Given the current state of those discussions, it appears that an agreement it will be filed no sooner than the middle of the week of July 11, 2005, and it could very well be later.

2. Public Counsel opposes the proposed dates for hearing suggested by Aquila in the event that no agreement is reached.

3. Aquila’s proposed hearing dates would require the parties to break off discussions and begin working to prepare for an evidentiary hearing in less than two weeks.

4. Because the parties have been working diligently and in good faith to try to resolve all issues, Public Counsel has not begun the kind of discovery that would be required in a contested case. If a hearing is scheduled, Public Counsel would need several months to conduct discovery and prepare testimony, whether the testimony is prefiled or live. In addition, because the current focus of Aquila's application is on financing, Public Counsel might need to hire a consultant to present Public Counsel's position to the Commission.

5. The driving factor behind the impossibly short schedule that Aquila has proposed is the August 6, 2005 deadline for Aquila to submit its financing plan to Kansas City Power & Light Company (KCPL). Rather than schedule a hearing so quickly that parties are deprived of their due process rights in order to attempt to meet this deadline<sup>1</sup>, the Commission could order KCPL (a party to this case) to explain the importance of the August 1 date. Even a minimal extension of two or three months would allow the parties and the Commission to give this case the time it needs.

6. Because efforts have been devoted exclusively to negotiating in the hope of reaching a settlement, Public Counsel has not yet developed a concrete alternative to Aquila's proposed hearing dates. However, if a hearing is necessary on all the issues raised by Aquila's amended application, such hearing should be scheduled for October or later, not mid-July as Aquila proposes.

WHEREFORE, Public Counsel respectfully requests that the Commission issue an order rejecting Aquila's proposal to have an evidentiary hearing the week of July 17, and setting a deadline of July 22, 2005, for other parties to propose more realistic schedules.

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<sup>1</sup> In addition to depriving Public Counsel and the other parties of their due process rights, Empire's proposed schedule would put the Commission under severe time constraints as well. Empire's schedule would allow the Commission only about a week to deliberate over issues worth several hundreds of millions of dollars and with far-reaching consequences for Missouri consumers and Missouri utilities.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

**/s/ Lewis R. Mills, Jr.**

By: \_\_\_\_\_

Lewis R. Mills, Jr. (#35275)

Public Counsel

P O Box 2230

Jefferson City, MO 65102

(573) 751-1304

(573) 751-5562 FAX

[lewis.mills@ded.mo.gov](mailto:lewis.mills@ded.mo.gov)

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 6<sup>th</sup> day of July 2005:

**/s/ Lewis R. Mills, Jr.**

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